# Synergy Spectacular Sdn Bhd v Teratas Petroleum Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(NCvC)(W)-353–03 OF 2020
NOR BEE ARIFFIN, AZIZAH NAWAWI AND LEE HENG CHEONG JJCA
7 JANUARY 2022

*Contract — Construction of terms of contract — Lease agreement — Whether terms and conditions in contractual documents between parties had to be read together and construed harmoniously — Whether trial judge's failure to construe the separate contractual documents as a whole resulted in perverse verdict*

The respondent sued the appellant in the High Court for payment of RM2,974,375.33 which it claimed was the amount the appellant owed it for the lease of scaffolding materials. The said amount comprised not only the rental price for the scaffolding but the also the cost of replacing parts which had gone missing during the lease period as well as the rental charged on such missing material. The High Court granted the respondent summary judgment on the claimed sum but on the appellant's appeal, the Court of Appeal reduced the summary judgment figure down to only RM245,655.17 (being the rental price for the scaffolding) and ordered the remainder of the claim for RM2,728,720.16 (being the replacement costs for missing parts and the rental on such missing parts) to go for trial. Following a trial, the High Court granted the respondent judgment for the said sum. The instant appeal was against that decision.

**Held**, allowing the appeal in part by granting the respondent only the sum of RM687,940.64 as costs for replacing missing scaffolding material and setting aside the RM2,041,834.54 granted by the High Court as rental on such missing material:

(1) The only issue before the court was whether the respondent was entitled to claim RM2,041,834.54 as monthly rental for the missing scaffolding materials. The appellant conceded that the respondent could only charge RM687,940.64 as replacement costs for the missing materials but not to also charge rental on such materials as that was not part of the contract. The appellant's position was that the terms and conditions in the price quotation issued by the respondent allowed it to only claim replacement costs of missing scaffolding materials. On the other hand, the respondent said that it was also entitled to claim rental on the missing materials based on a term in its tax invoice issued to the appellant (see paras 25–29).

(2) The trial judge failed to consider all the terms and conditions in the contractual documents between the parties, in particular, the price quotation which had to be read together with the tax invoice. The trial judge failed to consider a term in the price quotation that for scaffolding materials that were missing after the end of the rental period, the respondent might claim for their replacement cost. It was on this term that the appellant had accepted the respondent's offer and issued the service order. There was nothing in the price quotation that allowed the respondent to charge rental for the missing materials. With regard to the terms and conditions in the tax invoice, the same could not be read so as to vary the terms and conditions in the price quotation, especially with regard to the terms of payment for the missing materials. The terms and conditions in the tax invoice had to be read and construed in a manner that rendered them all in harmony with the general terms and conditions in the price quotation. This was because the tax invoice also made references to the general terms and conditions in the price quotation (see paras 31 & 33–34).

(3) The terms and conditions in the tax invoice made no reference to missing materials at all. Term and condition (iv) in the tax invoice, which the respondent relied upon, did not allow it to claim rental on missing scaffolding materials. It merely allowed the respondent to claim rental charges for materials until all materials had been returned, off-hired or final-checked and proof of documents had been received by the respondent. It was not disputed that the rented materials had been returned or off-hired. The respondent's suppliers had issued the off-hire note at the end of the hiring period, and once such a note was issued, the respondent could not claim for rental on the missing scaffolding materials. Pursuant to term (iii) of the price quotation, the respondent could only claim for the replacement costs of the missing materials and this was done by the respondent as could be seen from the description in its tax invoice dated 27 June 2015 (see paras 35–36).

(4) The trial judge was plainly wrong when she allowed the monthly rental charges on the missing materials at the end of the project after the issuance of the off-hire notes. Based on the price quotation, the respondent could only claim for the replacement cost of the missing materials (see para 38).

**[Bahasa Malaysia summary**

Responden telah menyaman perayu di Mahkamah Tinggi untuk satu jumlah sebanyak RM2,974,375.33 yang dikatakan sebagai jumlah perayu yang berhutang untuk pajakan bahan perancah. Jumlah tersebut bukan sahaja merangkumi harga sewa perancah tetapi juga kos menggantikan bahagian-bahagian yang telah hilang semasa tempoh pajakan serta sewa yang dikenakan ke atas bahan yang hilang tersebut. Mahkamah Tinggi

membenarkan penghakiman ringkas responden ke atas jumlah yang dituntut tetapi atas rayuan perayu, Mahkamah Rayuan mengurangkan ringkasan penghakim gantirugi tersebut kepada RM245,655.17 (harga sewa untuk perancah) dan memerintahkan baki tuntutan sebanyak RM2,728,720.16 (kos penggantian alat ganti yang hilang dan sewa pada bahagian yang hilang) untuk dibicarakan. Selepas perbicaraan, Mahkamah Tinggi membenarkan tuntutan responden untuk jumlah tersebut. Rayuan ini adalah terhadap penghakiman tersebut.

**Diputuskan**, membenarkan rayuan sebahagian dengan membenarkan jumlah RM687,940.64 terhadap responden sebagai kos menggantikan bahan-bahan perancah dan mengenepikan jumlah RM2,041,834.54 yang dibenarkan oleh Mahkamah Tinggi atas jumlah sewaan bahan-bahan yang hilang:

(1) Isu tunggal di hadapan mahkamah ini adalah sama ada responden berhak menuntut jumlah sebanyak RM2,041,834.54 sebagai sewa bulanan untuk bahan perancah yang hilang. Perayu mengakui bahawa responden hanya boleh mengenakan bayaran sebanyak RM687,940.64 sebagai kos penggantian untuk bahan yang hilang tetapi tidak mengenakan sewa ke atas bahan-bahan tersebut kerana ianya bukan sebahagian daripada kontrak. Pendirian perayu adalah terma dan syarat dalam sebut harga yang dikeluarkan oleh responden membenarkan hanya tuntutan kos penggantian bahan perancah yang hilang. Sebaliknya, responden mengujahkan bahawa mereka berhak menuntut sewa ke atas bahan yang hilang berdasarkan terma dalam invois cukai yang dikeluarkan kepada perayu (lihat perenggan 25–29).

(2) Hakim bicara gagal mempertimbangkan semua terma dan syarat di dalam dokumen kontrak antara pihak-pihak, khususnya, sebut harga yang perlu dibaca bersama dengan invois cukai. Hakim bicara gagal mempertimbangkan istilah di dalam sebut harga bahawa untuk bahan perancah yang hilang selepas akhir tempoh sewa, responden mungkin menuntut kos penggantian mereka. Menurut terma ini, perayu telah menerima tawaran responden dan mengeluarkan arahan perkhidmatan. Tiada mana-mana terma di dalam sebut harga yang membolehkan responden mengenakan sewa untuk bahan yang hilang. Berkenaan dengan terma dan syarat di dalam invois cukai, ianya tidak dapat mengubah terma dan syarat di dalam sebut harga, terutamanya berkenaan dengan terma pembayaran untuk bahan yang hilang. Terma dan syarat dalam invois cukai perlu dibaca dan ditafsirkan dengan menjadikan semuanya selaras dengan terma dan syarat umum dalam Sebut Harga. Hal ini kerana invois cukai juga dirujuk kepada terma dan syarat umum di dalam sebut harga (lihat perenggan 31 & 33–34).

(3) Terma dan syarat di dalam invois cukai tidak merujuk kepada bahan yang hilang sama sekali. Terma dan syarat (iv) di dalam invois cukai yang

dirujuk oleh reponden tidak membenarkan tuntutan sewa pada bahan perancah yang hilang. Ia hanya membenarkan responden menuntut bayaran sewa sehingga semua bahan dikembalikan, tidak digunakan atau diperiksa akhir dan bukti dokumen bahan tersebut telah diterima oleh responden. Tidak dipertikaikan bahawa bahan-bahan yang disewa telah dikembalikan atau tidak digunakan. Pembekal responden telah mengeluarkan *off-hire note* pada akhir tempoh kontrak tersebut, dan sebaik sahaja nota tersebut dikeluarkan, responden tidak boleh menuntut sewa ke atas bahan perancah yang hilang. Mengikut terma (iii) sebut harga tersebut, responden hanya boleh menuntut kos penggantian bahan yang hilang dan ini dilakukan oleh responden seperti yang dapat dilihat dari keterangan dalam invois cukai bertarikh 27 Jun 2015 (lihat perenggan 35–36).

(4) Hakim bicara jelas terkhilaf dengan membenarkan bayaran sewa bulanan ke atas bahan-bahan yang hilang pada akhir projek tersebut selepas pengeluaran *off-hire note*. Berdasarkan sebut harga tersebut, responden hanya boleh menuntut kos penggantian bahan-bahan yang hilang (lihat perenggan 38).]

**Cases referred to**

*Caltex Oil Malaysia Ltd v Classic Best Sdn Bhd & Ors* [2007] 4 MLJ 772, HC (refd)

*Catajaya Sdn Bhd v Shoppoint Sdn Bhd & Ors* [2021] 2 MLJ 374, FC (refd)

*CIMB Bank Bhd (formerly known as Bumiputera Commerce Bank Bhd) v Sebang Gemilang Sdn Bhd & Anor* [2018] 3 MLJ 689, FC (refd)

*Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1, FC (refd)

**Appeal from**: Civil Suit No BA-22NCVC-559–09 of 2017 (High Court, Shah Alam)

*Aizul Rohan Anuar (Nurnadiah Zaini and Hazwa Mahira Azman with him) (Saiful, Roger & Co) for the appellant.*

*Mohd Norfazli bin Mohd Zakaria (Farah Lisa Ayub with him) (Ayub, Dyana, Zainal & Zakaria) for the respondent.*

**Azizah Nawawi JCA:**

INTRODUCTION

**[1]** This is an appeal against the decision of the learned High Court judge dated 17 February 2020 allowing the plaintiff/respondent's claim of RM2,728,720 after a full trial.

**[2]** Having considered the appeal records and the submissions of the parties, this court has allowed the appeal in part, by setting aside the judgment sum of RM2,041,834.54 (for monthly rental of missing material) and affirming the judgment sum of RM687,940.64 (the replacement cost of missing material). Parties are also ordered to bear their own costs.

THE SALIENT FACTS

**[3]** The plaintiff is in the business of leasing of, amongst others, scaffolding materials, in the oil and gas industry.

**[4]** The plaintiff issued a price quotation dated 28 November 2014 to the defendant, on the monthly rental rate of the scaffolding materials, and the terms and conditions of the rental are as follows:

(a) all scaffolding set and manpower are subject to availability, please confirm prior before order;

(b) all scaffolding set and manpower are ex work offshore Kemaman/Kertih area only, client to provide method of travel to offshore for the scaffolding set and manpower respectively; and

(c) all accessories for scaffolding set are subject to replacement from client in the event the accessories is missing or badly damage during the rental period, we accept one to one replacement of the said accessories if deemed necessary or payable by cash based on the said accessories market price.

**[5]** After accepting the plaintiff's price quotation, the defendant had issued service orders to the plaintiff to lease/rent scaffolding materials for a few projects of the defendant, namely:

(a) 'Dulang A/Bekok C' project at Kemaman, Terengganu (dated 15 April 2015);

(b) 'Semarang TSM' project at Labuan (dated 5 May 2015);

(c) 'TBG — A' project at Labuan (dated 28 July 2015);

(d) 'KAKG — A' project at Labuan (dated 22 September 2015); and

(e) 'SMJT — F' project at Labuan.

**[6]** The plaintiff supplied the scaffolding materials to the various project sites as instructed by the defendant, in accordance with the defendant's service orders. The scaffolding materials were delivered pursuant to several delivery orders.

**[7]** The scaffolding materials were not supplied by the plaintiff directly, but by the plaintiff's suppliers for the said projects, namely:

(a) Empada Sdn Bhd (Empada) in Labuan, Sabah;

(b) Specialize Access Sdn Bhd in Kemaman, Terengganu;

(c) Serba Mahir Sdn Bhd in Labuan and Kota Kinabalu, Sabah; and

(d) TS Telaga Tanjung Supply and Services in Terengganu.

**[8]** When the lease for the scaffolding materials had ended, the plaintiff's suppliers would collect the scaffolding materials from the project sites. After the rented materials have been returned, an off-hire note will be issued.

**[9]** Thereafter, the plaintiff would issue tax invoices to the defendant for the supply of the scaffolding materials. The tax invoices will detail the descriptions of the scaffolding materials, the quantity, rental rate and amount of rental due. The tax invoices also contain the following terms and conditions:

(i) All cheques should be crossed and made payable to 'Teratas Petroleum Sdn Bhd CIMB Account No ... ';

(ii) goods delivered are not returnable unless otherwise proven wrong specification of goods supplied;

(iii) Teratas Petroleum Sdn Bhd remains the owner of the said goods delivered and have the right to enter any premises to retrieve;

(iv) Teratas Petroleum Sdn Bhd have the right to claim all ongoing rental charge for materials/equipment rent by clients until all materials/equipment had been returned, off hired or final checked and proof of documents had been received by Teratas Petroleum; and

(v) please refer quotation TPPQ025/301024/AP, TPPQ003/080115/AP and TPPQ016/051015/AP for general terms and conditions.

**[10]** When the defendant failed to pay for the rental of the scaffolding materials, the plaintiff's solicitor issued a notice of demand dated seeking payment of RM2,974,375.33.

**[11]** Subsequently the plaintiff filed this suit seeking payment of RM2,974,375.33. The summary of the plaintiff's claim in para 7 of the statement of claim is as follows:

| The plaintiff's claim in para 7 of the statement of claim | Breakdown of the Plaintiff's claim |
|---|---|
| RM 2,974,375 | Monthly Rental for Missing Material<br>RM2,041,834.54<br>(Bagi Projek Dulang A/Bekok C: Bil 3 – 18 Bagi Projek Semarang TSM: Bil 4 – 17 Bagi Projek SMJTF: Bil 3 – 30 Bagi Projek SMJTF: Bil 4 – 6, 9 – 30)<br><br>Replacement for Missing Material<br>RM687,940.64<br>(Bagi Projek Dulang A/Bekok C: Bil 2 Bagi Projek Semarang TSM: Bil 2 – 3 Bagi Projek SMJTF: Bil 2)<br><br>Rental of Scaffolding<br>RM245,655.17<br>(Bagi Projek Dulang A/Bekok C: Bil 1 Bagi Projek TBG-A: Bil 1 – 2 Bagi Projek Semarang TSM: Bil 1 Bagi Projek SMJTF: Bil 1, 7 – 8) |

**[12]** An application for summary judgment of the total sum of RM2,974,375.33 was allowed by the High Court. However, the defendant's appeal to this court against the summary judgment was allowed in part, whereby summary judgment was only allowed for the sum of RM245,655.17 being the rental sum of the scaffolding materials and the balance sum of RM2,728,720.16 (for the rental and replacement costs of the missing scaffolding materials) was remitted for trial.

**[13]** As such, the balance sum of RM2,728,720.16 that was remitted for trial is as follows:

| Balance sum remitted for trial | Breakdown of Claim |
|---|---|
| RM 2,728,720.16 | Monthly Rental for Missing Material<br>RM 2,041,834.54<br><br>Replacement for Missing Material<br>RM 687,940.64 |

**[14]** On 17 February 2020, the High Court has allowed the plaintiff's claim for the sum of RM2,728,720.16. Hence the defendant filed this appeal.

DECISION OF THE HIGH COURT

**[15]** The learned trial judge dealt with only two issues in the High Court despite the fact that parties have agreed to seven issues to be tried. The two issues decided by the learned trial judge are as follows:

Isu-isu untuk diputuskan

(i) Sama ada plaintif mempunyai locus standi untuk memulakan tindakan ini terhadap defendan; dan

(ii) Sama ada satu pemeriksaan bersama antara plaintif dan defendan perlu dibuat setelah tamat tempoh penyewaan bagi menentukan kuantiti peralatan yang hilang.

**[16]** In fact, issue (i) was not an agreed issue to be tried by the parties, whilst issue (ii) is issue (6) of the 'Isu-Isu untuk dibicarakan'.

**[17]** On locus standi, the learned trial judge held that the plaintiff has a locus to commence this suit as the plaintiff had issued the quotation price and the invoices, which had been accepted by the defendant. Thus, there was a contractual relationship between the parties based on the documents. The fact that the rented materials had been supplied by different parties is a non issue.

**[18]** Issue (ii) is on joint inspection. The learned trial judge had rejected the expert evidence of DW2 and made a finding that DW2 is not a credible witness. The learned judge made the following finding:

Setelah meneliti dan mendengar keterangan PW4 dan DW1, saya mendapati DW1 bukanlah saksi yang credible. Adalah merbahaya untuk saya menerima bulat-bulat keterangan beliau. Saya tolak keterangan beliau yang tidak disokong oleh dokumen. Pada saya, keterangan saksi-saksi plaintif jelas membuktikan bahawa pemeriksaan bersama telah dibuat oleh Empada dan Deleum sebelum offhire note disediakan dan ditandatangani. Offhire note akan menunjukkan kuantiti peralatan yang hilang. Setelah offhire note disediakan, barulah invois dikeluarkan.

**[19]** It is to be noted that the learned trial judge did not consider the other six issues raised by the parties, which are essentially on the construction of the contractual documents.

OUR DECISION

**[20]** The central feature of appellate intervention is trite, that is to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. This had been explained by the Federal Court in the case of *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1, where the Federal Court held

as follows:

> [14] In our view, the *Court of Appeal in citing these cases had clearly borne in mind the central feature of appellate intervention, ie to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence*. In so doing, the Court of Appeal was perfectly entitled to examine the process of evaluation of the evidence by the trial court. Clearly, the phrase 'insufficient judicial appreciation of evidence' merely related to such a process. This is reflected in the Court of Appeal's restatement that a judge who was required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. The Court of Appeal further reiterated the principle central to appellate intervention, ie that a decision arrived at by a trial court without judicial appreciation of the evidence might be set aside on appeal. This is consistent with the established plainly wrong test. (Emphasis added.)

**[21]** In another case, the Federal Court in *CIMB Bank Bhd (formerly known as Bumiputera Commerce Bank Bhd) v Sebang Gemilang Sdn Bhd & Anor* [2018] 3 MLJ 689 held as follows:

> [38] The issue of knowledge of the equitable assignment is entirely a question of facts. Both the courts below concluded that the appellant had knowledge of the equitable assignment based on the facts and circumstances of the case. *It is trite law that an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its judicial decision or there has been no or insufficient judicial appreciation of evidence* (see *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1). (Emphasis added.)

**[22]** Bearing in mind the above cases, we will now deal with the issues raised by the parties.

**[23]** In coming to a decision in cases involving the renting of items/materials, we are of the considered opinion that due emphasis should be given documentary evidences, such as price quotation, service orders, delivery orders, tax invoices and statement of accounts, which would collectively constitute a contract reduced into writing (see *Caltex Oil Malaysia Ltd v Classic Best Sdn Bhd & Ors* [2007] 4 MLJ 772).

**[24]** The contractual relationship between the parties started with the issuing of the price quotation for the scaffolding materials by the plaintiff. After accepting the plaintiff's price quotation, the defendant would issue the service order for the rental of the scaffolding materials. The plaintiff would then issue the delivery order for the delivery of the rented materials. At the end of the project, the rented materials would be collected by the plaintiff's respective suppliers and the off-hire note will be issued. Thereafter, the tax invoices for the rental would be issued by the plaintiff. Any rented materials that were missing will be subject to charges as well.

**[25]** In this appeal, the defendant/appellant is not disputing the fact that some of the scaffolding materials had gone missing. Their only issue is that the plaintiff cannot charge rental for the missing materials, as this was not part of the contract. The defendant submits that the plaintiff can only charge RM687,940.64 as the replacement costs of the missing scaffolding materials.

**[26]** It is not in dispute that from the sum claimed of RM2,728,720.16, the sum of RM2,041,834.54 is for the monthly rental for the missing scaffolding materials, whilst the claim for RM687,940.64 is for the replacement costs of the missing scaffolding materials. This was graciously conceded by the learned counsel for the plaintiffs before this court. The rental period for the missing scaffolding materials was for about four years after the end of the projects.

**[27]** Therefore, the only issue before this court is whether the plaintiff can charge monthly rental for the missing scaffolding materials.

**[28]** The defendant took the position that in respect of missing scaffolding materials, the parties are bound by the terms and conditions in the price quotation issued by the plaintiff, which states that for items what were missing or badly damage during the rental period, the plaintiff would accept 'one to one replacement of the said accessories if deemed necessary or payable by cash based on the said accessories market price'. Therefore, the defendant is only agreeable to pay RM687,940.64, which is for the replacement costs of the missing scaffolding materials.

**[29]** The plaintiff however is relying on a term in the tax invoice, which states that the plaintiff have the right to claim all ongoing rental charge for materials/equipment rent by defendant 'until all materials/equipment had been returned, off hired or final checked and proof of documents had been received by' the plaintiff. Therefore, the plaintiff claimed that it is entitled to claim rental for the missing materials after the end of the projects. At the same time, the plaintiff is also claiming for the the replacement costs of the missing scaffolding materials.

**[30]** We refer to the Federal Court decision in *Catajaya Sdn Bhd v Shoppoint Sdn Bhd & Ors* [2021] 2 MLJ 374 for the proposition that one cannot construe a contractual term in isolation:

> [57] The terms and conditions of an agreement that have been agreed to by the parties of the agreement cannot be simply brushed aside and ignored. This court through the judgment of Azahar Mohammad FCJ in the case *Lucy Wong Nyuk King (F) & Anor v Hwang Mee Hiong (F)* [2016] 3 MLJ 689; [2016] 4 CLJ 813 *explained the principle of construing a contract as follows:*
>
> > *... it is an established principle of construing a contract that, among others, a contract must be construed as a whole, in order to ascertain the true meaning of its several*

> *clauses, and also, so far as practicable, to give effect to every part of it. Each clause in an ordinary commercial contract should be so interpreted as to bring them into harmony with the other clauses of the contract* (see *National Coal Board v Wm Neill & Son (St Helens) Ltd* [1984] 1 All ER 555 *which was cited in Royal Selangor Golf Club v Anglo-Oriental (Malaysia) Sdn Bhd* [1990] 2 MLJ 163; [1990] 1 CLJ 995; [1990] 3 CLJ Rep 37 and *Mulpha Pacific Sdn Bhd v Paramount Corp Bhd* [2003] 4 MLJ 357; [2003] 4 CLJ 294). In *Australian Broadcasting Commission v Australasian Performing Right Association Ltd* [1973] 129 CLR 99, it was held that the whole of the contract has to be considered, since the meaning of any one part of it may be revealed by other parts, and the words of every clause must if possible be construed so as to render them all harmonious one with another. (Emphasis added.)

**[31]** We are of the considered opinion that the learned trial judge has erred in law when she failed to consider all the terms and conditions in the contractual documents between the parties, in particular the price quotation which is to be read together with the tax invoice.

**[32]** We find that the learned trial judge has erred in law when she merely made the following finding without construing the contractual documents between the parties:

> Keputusan:
>
> Saya mendapati saksi-saksi plaintif bukan sahaja credible, malah tuntutan plaintif disokong oleh invois, offhire note dan penyata akaun. Oleh itu, tuntutan plaintif untuk jumlah RM2,728,720.16 dibenarkan dengan kos RM15,000.

**[33]** The learned trial judge had failed to consider a term in the price quotation offered by the plaintiff, that for scaffolding materials that were missing after the end of the rental period, the plaintiff may claim for replacement cost of the missing materials. It is on this term that the defendant had accepted the plaintiff's offer and issued the service order. There is nothing in the price quotation that allows the plaintiff to charge rental for the missing materials. This was also the evidence of Encik Shamsuddin (SP2), who states that for missing items, the claim will be based on the price quotation:

> FL: Ok. En Shamsuddin, bagaimana pula dengan barang yang tidak dikembalikan?
>
> Sham: Seperti dalam perjanjian quotation, benda, barang yang tidak dikembalikan dikira hilang, loss material. Jadi kami akan caj, caj balik kepada klienlah, Teratas Petroleum. Berapa jumlah barang yang hilang, kami akan invois.

**[34]** With regard to the terms and conditions in the tax invoice, we are of the considered opinion that the same cannot be read so as to vary the terms and conditions in the price quotation, especially with regard to the terms of payment for the missing materials. The terms and conditions in the tax invoice must be read and construed in a manner so as to render them all in harmony

with the general terms and conditions in the price quotation. This is because tax invoice also makes references to the general terms and conditions in the price quotation (see term/condition (v) of the tax invoice).

**[35]** Added to that, we find that the terms and conditions in the tax invoice makes no reference to missing materials at all. Term and condition (iv) of the tax invoice which was relied by the plaintiff does not allow the plaintiff to claim rental on missing scaffolding materials. It merely allows the plaintiff to claim rental charges for materials until all materials had been returned, off hired or final checked and proof of documents had been received by the plaintiff.

**[36]** It is not in dispute that the rented materials have been returned or off hired. An off-hire note is issued at the end of the hiring period, when the project is completed. The off-hire note will be signed by both parties after an inspection, and it contain the details of the rented materials, quantity in the delivery order, actual quantity received and shortages. In this case, the plaintiff's suppliers, such as empada sdn bhd had issued the off-hire note at the end of the hiring period. Therefore, once the plaintiff's suppliers have issued the off-hire note, the plaintiff cannot claim for rental of the missing scaffolding materials. Pursuant to term (iii) of the price quotation, the plaintiff can only claim the replacement costs of the missing materials. This was done by the plaintiff as can be seen from a tax invoice dated 27 June 2015, where the description is 'To Claim Invoice on Replacement Cost for Missing Material Project: Semarang TSM — Loose Materials'.

**[37]** It was also in the evidence before the court that the plaintiff's witness, Saiful Izwan Mohd Syukri (PW2) had agreed that for the missing materials, the plaintiff had issued invoices for rental charges because the defendant had failed to pay the replacement costs:

> RM: Ok. Dan No 3, semuanya sampai No 18 adalah monthly rental missing.
>
> Saiful: Ya
>
> RM: Ok. Setuju atau tidak jika saya katakan bahawa dokumen di No 2 itu invois yang dikeluarkan, sorry, Dokumen No 3, 3 ke 18 ini, dikeluarkan kerana Plaintif mendakwa Defendan gagal bayar replacement cost of missing materials.
>
> Saiful: Setuju.

**[38]** As such, we are of the considered opinion that the learned trial judge was plainly wrong when she allowed the plaintiff's claim, not only for the replacement cost of the missing scaffolding materials, but also the monthly rental charges for about four years of the missing materials at the end of the project, after the issuance of the off-hire notes. We find that based on the price quotation, the plaintiff can only claim for the replacement cost of the missing materials.

**[39]** The plaintiff has also submitted that the grounds in the memorandum of appeal are not the pleaded issues raised in the defendant's statement of defence. We respectfully disagree as the construction of the contractual documents have been pleaded in para 6 of the statement of defence, inter alia:

> 6. Defendan ingin menjawab Perenggan 7 Pernyataan Tuntutan Plaintif dengan memecahkan jawapan Defendan kepada tiga (3) isu iaitu:
>
> a. Tentang inbois ('Invoice');
>
> b. Tentang Pesanan Perkhidmatan ('Service Order'); dan
>
> c. Tentang Pesanan Penghantaran ('Delivery Order')
>
> a. Tentang inbois ('Invoice')
>
> i) ...
>
> ii) Defendan ingin menyatakan di sini bahawa kesemua inbois yang dinyatakan dalam perenggan 7 Pernyataan Tuntutan Plaintif yang merujuk kepada sewa bulanan Peralatan Sewa tersebut yang hilang ('monthly rental missing material') adalah suatu perlanggaran ke atas terma-terma didalam Sebutharga tersebut kerana didalam Sebutharga tersebut Plaintif hanya menyatakarn seperti berikut:
>
> ... 3) All accessories for scaffolding set are subject to replacement from client In the event the accessories is missing or badly damage during rental period, we accept one to one replacement of the said accessories if deemed necessary or payable by cash based said accessories market price
>
> iii) Defendan dengan ini menyatakan bahawa inbois yang dirujuk oleh Plaintif di Perenggan 7 Pernyataan Tuntutan Plaintff adalah cacat dan/atau tidak ('defective') dan Defendan kerana tidak merujuk kepada sebutharga yang betul yang merupakan asas kontrak di atas Plaintif dan Defendan dan akan membuktikan hal ini ketika perbicaraan penuh kelak.
>
> iv) Defendan dengan ini menyatakan bahawa lnbois yang dirujuk oleh Plaintif di dalam Perenggan 7 Pernyataan Tuntutan Plaintif adalah dikeluarkan dengan niat mala fide kerana Defendan telah pun mengeluarkan suatu 'Off–Hire Note' setiap kali Peralatan Sewa tersebut dipulangkan kepada Plaintif.

**[40]** In any event, the construction of the contractual documents are issues raised in the 'Isu-isu untuk dibicarakan', inter alia:

> ...
>
> 3. samada sebutharga dan invois mengikat Plaintif dan Defendan bagi satu Perjanjian.
>
> ...
>
> 5. samada terdapat barang hilang di dalam jagaan (custody) Defendan.
>
> ...

7. sama ada Defendan telah memecah perjanjian asal apabila gagal, enggan dan/atau cuai untuk membayar jumlah yang dituntut oleh Plaintif ke atas barang yang di dakwa hilang oleh Plaintif.

## CONCLUSION

**[41]** Premised on the reasons enumerated above, we find merit in the appeal and we allow the appeal in part, by setting aside the rental cost of the missing scaffolding materials in the sum of RM2,041,834.54 and affirming the sum claimed for replacement cost of RM687,940.64.

*Appeal allowed in part; the rental cost of the missing scaffolding materials in the sum of RM2,041,834.54 is set aside and sum claimed for replacement cost of RM687,940.64 is affirmed.*

Reported by Ashok Kumar